IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2007

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THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Writ Appeal No.727 of 1999

The Superintending Engineer,
Tirupattur Electricity
Distribution Circle,
Tirupattur. ..Appellant /Petitioner

Vs.

1. The Presiding Officer,
Second Addl. Labour Court,
Madras.

2. M.Vedagiri ..Respondents/Respondents

Appeal under Clause 15 of the Letters Patent, to set aside the order of this Court dated 16.3.1999 passd in W.P. No.16949 of 1991. The Writ Petition filed udner Article 226 of the Constitution of India for the relief sought for to set aside the impugned order passed by the first respondent in C.P.No. 52/1998 dated 17/1/1990.

For Appellant : Mr.John for
M/s.T.S.Gopalan & Co.

For Respondents: Mr.P.V.Bakthavatchalam

JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

This appeal is filed to set aside the order of the learned Single Judge passed in W.P. No.16949 of 1991 dated 16.03.1999.

2. The brief facts arising out of this Writ Appeal are as under:
The appellant is a part of Tamil Nadu Electricity Board. The second respondent was working under the petitioner as Foreman and retired from service on 31.05.1987. There are two categories of retirement benefits provided to the employees in the Tamil Nadu Electricity Board, one under

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the Pension Scheme and another under the Contributory Provident Fund Scheme. The Pension Scheme was originally applicable only to the Provincial Cadre employees. The Contributory Provident Fund Scheme was applicable to the regular work establishment workmen. Under the Pension Scheme, the benefits payable are as follows:-

a) Pension and General Provident Fund accumulations

b) Death-cum-Retirement Gratuity

c) Family Pension to the family of the deceased employees

d) Benefits under the Tamil Nadu Electricity Board Employees Family Benefit Fund Rules 1974.

e) Benefits under Tamil Nadu Electricity Board Benefit Fund Subsidiary Scheme 1986 and

f) Benefits under Tamil Nadu Electricity Board Employees Special Provident Fund cum Gratuity Scheme.

Under the Contributory Provident Fund Scheme, the benefits payable are as follows:-

a) Contributory Provident Fund contributions

b) Special Contribution payable under Regulation 37 subject to Regulations 38 and 39.

c) Gratuity under the payment of Gratuity Act 1972.

d) Family Pension under Employees Family Pension Scheme 1971.

e) Benefits under Tamil Nadu Electricity Board Employees Family Benefit Fund Rules 1974 and

f) Benefits under Tamil Nadu Electricity Board Family Benefit Subsidiary Scheme 1986.

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The Unions of the workers in the Tamil Nadu Electricity Board represented for the extension of Pension Scheme which was applicable only to the Provincial Cadre Employees, to the Regular Work Establishment Workmen also, in view of the fact that the benefits payable under the Pension Scheme was more beneficial than the one payable under the Contributory Provident Fund Scheme. Considering the various representations of the workmen, the Tamil Nadu Electricity Board, after getting necessary exemptions under the Employees Provident Fund & Miscellaneous Provisions Act as well as Payment of Gratuity Act 1972 from the respective Government, passed its proceedings in B.P.No.(FB) 5 (Audit Branch) dated 25.06.1986, extending the Pension Scheme to the Regular Work Establishment Workmen also from 01.07.1986 and by virtue of this proceedings, all the workmen irrespective of the category to which they belong, were brought on par in the matter of payment of retirement benefits. By this proceedings, the Pension Scheme was made applicable to the employees of the Tamil Nadu Electricity Board without reference to their category of employment on and from 01.07.1986. Hence, such of those workmen who retired or expired after 01.07.1986 were not therefore entitled for any retirement benefits other than the one provided under the Pension Scheme. The second respondent was serving a non-pensionable service and finally shifted to pensionable service. Consequently on the implementation of Pension Scheme to Regular Work Establishment Workmen from 01.07.1986 onwards, the terminal benefits of the second respondent were settled as per the Pension Scheme. Also, the second respondent was a subscriber to the Tamil Nadu Electricity Board's Contributory Provident Fund during the period of his non-pensionable service and on transfer to pensionable service, he was subscribing the General Provident Fund so as to avail the retirement benefit under the pensionable service. Consequent to the introduction of Pension Scheme to the Regular Work Establishment Workmen governed by the Contributory Pension Fund Scheme, the second respondent is entitled to the benefits as provided to the categories of employees under the Pension Scheme. It is also significant to mention that under the General Provident Fund Scheme, it is not obligatory on the part of the employer to pay employer's contribution to the workmen on the eve of their retirement or quitting service and hence the employer's Special Contribution is also not payable. The employer's contribution standing to the credit of the second respondent in his Contributory Provident Fund Account, on his enrolment of General Provident Fund, was credited to the Board's Account and he was paid the amount standing to his credit in his General Provident fund which includes the transfer of the accumulation of the Contributory Provident Fund accounts with interest to the tune of Rs.12,827/-. Besides the above, a monthly pension of Rs.527/- with Dearness Allowance for his qualifying service, commuted pension of Rs.21,966/- and a sum of Rs.18,872/- towards Gratuity under Death-Cum-Retirement Gratuity Scheme applicable to the pensionable employees were also paid. These terminal benefits were settled to the second respondent based on his application and the payments were received by him without any protest. Later, the second respondent made a claim for payment of Special Contribution payable under the Regulations 37 of the Contributory Provident Fund Regulations.

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The said claim was made before the II Additional Labour Court, Madras, the above mentioned first respondent, in C.P.No.52 of 1988 under Section 33-C (2) of the Industrial Disputes Act. The contention of the Board is that, as per Regulation 41, though a non-pensionable cadre employee is transferred to pensionable service, he is not eligible for the employer's contribution as well as Special Contribution. The II Additional Labour Court, Madras, the above mentioned first respondent, without appreciating the contention of the Board, passed the order on 17.01.1990 computing the relief claimed by the second respondent. Aggrieved by the order, the appellant herein, filed Writ Petition No.16949 of 1991 before this Court and by order dated 16.03.1999 this Court dismissed the writ petition and confirmed the finding of the first respondent. Aggrieved by the order, the appellant has filed the present Writ Appeal.

3. Both the counsel submitted that the issue in this Appeal is covered by the Division Bench Judgment of this Court passed on 19.04.1999 in Writ Appeal No.379 of 1995. The relevant portion of that judgment is extracted as under:

> "This appeal was argued for considerable time. Learned counsel appearing on behalf of the appellant also raised a question of the tenability of the original claim petition under Section 33(c)(2) of the Industrial Disputes Act and relied on number of judgments including the judgment of the Supreme Court reported in (1995) 1 SCC 235 (Municipal Corporation of Delhi Vs. Ganesh Razak and another). At this point of time, however, learned counsel for the respondents sought permission to withdraw the original claim petition itself with liberty to pursue such other remedy as is available to the respondent in law.
>
> 2. Considering that this question would be important for the employees of the Tamil Nadu Electricity Board, and further considering that for deciding the question involved, evidence would be required, though the request is unusual, we are inclined to allow it. In allowing the request, we are considering mainly the question of the rights of the workmen and the necessity for getting position in law straightened out. Accordingly, the request is granted. The original claim petitioners / respondents herein are allowed to withdraw their original claim petition made before the Labour Court with liberty to pursue such other remedy as is available to them in the Court including raising an industrial dispute.

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3. The writ appeal is, therefore, disposed of in terms of the above order. No costs. Consequently, C.M.P. No.6145 of 1995 is dismissed."

4. The writ appeal is disposed of in terms of the above judgment. No costs. Consequently, C.M.P. No.7192 of 1999 is closed.

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Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1.The Presiding Officer,
Second Addl. Labour Court,
Madras.
+ One cc to mr. T.s. Gopalan Advocate SR 19745
+ One cc to Mr. P.V. Bakthavatchalam Advocate sR 19359
NSM (co)
sg 10/4/07

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